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Contemporary Status of Law Science: Postmodernism, Uncertainty about its Scientific Character and Change in the Approach to Science Itself

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Abstract

The article deals with the contemporary status of law science in Lithuania and world-wide. This status cannot be conceived without the analysis of the effect of postmodernism (new science or the science of complex dynamic systems). Postmodern legal thought hardly finds its place in Lithuanian law science, though in the world postmodern ideas and new (postmodern) science of complex dynamic systems affect the science of law. Law science has still much difficulty in “separating” from modernism, which conditions the deterministic, static and narrow attitude towards science. We believe that the time is ripe for a change in the approach towards science, focus more attention to indeterminism, humanization of science, social context and spontaneous development of thought. The aim of the article was to establish the contemporary status of law science by revealing the key points of the emergence of postmodern period, its development and influence, the problem of uncertainty of the scientific nature of law science as well as the importance of the changing approach to science itself, and to answer the question whether there is a postmodern legal thought in Lithuania and what is the direction of the development of law science. Methods: scientific analytical, systemic, logical. In addition, the empirical method was used to study the quantity of the documents. The main finding. It is high time to change the approach to science itself. Contemporary (new) science encourages us to combine science, common sense and social context in order to understand the reality more clearly, though not absolutely clearly. Scientists of law need to understand the importance of connecting science and life, and most importantly, to use not a single one, but a number of methodologies (and their integration) in science. Only by changing our approach to science in general we will be able to perceive law as a complex dynamic system.

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1. Introduction

Today the world lives in a time of changes: values, attitudes, the thinking paradigm are changing, and postmodern ideas are becoming more popular. Inevitably, they influence the science of law as well (e.g., Patterson, 2008; Jones, 2008). Along with the changes and new ideas, a variety of concerns arises. It is also questionable whether the law is really a science; maybe law is just a well-developed profession and trade, which does not require the necessary components of modern science - original hypothesis, presumptions, doubts, and their (hypothesis) objective verification. The scientific character of law science is questioned by many lawyers and legal researchers: for example, Markey (1984), Gretton (2006). This article focuses on the work of Lithuanian and Western scientists. As we can see, in the Lithuanian academic community law science is insular and hardly accepts innovations, and the world's scientists are increasingly talking about the effect of postmodernism (and new – postmodern - science of complex dynamic systems) on the science of law (e.g., Jones, 2008; Holz, 2006; Patterson, 2008).

The aim of the article was to establish the contemporary status of law science by revealing the key points of the emergence of postmodern period, its development and influence, the problem of uncertainty of the scientific nature of law science as well as the importance of the changing approach to science itself, and to answer the question whether there is a postmodern legal thought in Lithuania and what is the direction of the development of law science. Due to the limited scope of this article, this aim is an aspiration for the future. In this article, the problems are touched and examined only in the most general sense. Aiming at achieving the aim of the study, the following research methods were used: scientific analytical, systemic and logical. Besides, the empirical method, a minor quantitative study of documents, was used to get closer to a clearer understanding of the status of modern Lithuanian law science, which is difficult to imagine without the influence of postmodernism. Articles from the journal “Teisė” [Law] from 2000 to 2013 were studied to find out how many of them contained at least a hint about postmodernism. For the wider world-view, the examination of the extent of articles on the science of law (2000-2013) with at least a hint about postmodernism was carried out in “ISI Web of Science” and “Oxford Journals” databases.

2. Postmodernism - the “creator” of the contemporary status

2.1. What is postmodernism?

According to J. F. Lyotard (2010, pp. 13, 49-64), this word notes the existence of the state of culture after transformations which has changed the “game” rules of science, literature and other arts since the end of the nineteenth century. He argues that postmodernism no longer believes in “grand narratives” that can validate all the knowledge and practices. Merriam-Webster’s dictionary provides the following definition of postmodernism: either “of, relating to, or being an era after a modern one”, or “of, relating to, or being any of various movements in reaction to modernism that are typically characterized by a return to traditional materials and forms (as in architecture) or by ironic self-reference and absurdity (as in literature)”, or finally “of, relating to, or being a theory that involves a radical reappraisal of modern assumptions about culture, identity, history, or language”. In our opinion, it is now when we face the revaluation and change. It is believed that the first concept postmodernism was used by literary critics I. Horne and H. Levin in 1950, but it was more widely discussed only after a decade, and also in literary criticism. The concept of postmodernism established itself in the USA and spread among architects, painters and art critics. From the USA it came to Europe, first of all to France, where it rather oddly mixed in with a quite influential post-structural philosophy of the time (Huyssen, 1984). In the social sciences, postmodernism was referred to only about the 1970s (Alvesson, 2004). Postmodernism is characterized by two main ideas. First, it is the removal of objective truth. Second, it is the right to individuality and fetterless freedom, rejection of immutable principles and standards of behavior (Kondrusievičius, 2008). It should be critically noted that the feeling of absolute relativism is very dangerous because then everything “is fine”. This feeling is formed while experiencing great uncertainty. Therefore, we believe that we should try to increasingly approach clarity and to avoid false prophets.

3. Uncertainty about the scientific character of Law Science and postmodernism in Law Science

We think that both Lithuanian science and jurisprudence in general were highly influenced by dogmatism which was formed at the beginning of their development and which has not liberated law scholars and practitioners for many years. Postmodernism hardly finds its way into the law science in the Lithuanian law academic community. Aiming at getting a concrete picture of postmodernism or at least hints of it in at legal articles, we examined the Lithuanian Law scientific journal “Teisė” [Law] (2000-2013) according to their titles and abstracts. As we can see in Table 1, we were able to find only three articles of this kind in the journal. In addition to this small illustrative study, we can find other manifestations of postmodernism in Lithuania. The study subject program “Legal Theory” for the first year students of VU Faculty of Law includes the post-modern theories of law; several scientific articles, for example, by J. Juškevičius (2008), E. Kūris (2009) and D. Beinoravičius (2011), mention the postmodern period. The fact that Lithuanian Law science rarely ever mentions it could be explained by the insularity the science of law, its dogmatism and rejection of new ideas even without considering them. To see a wider global view, we investigated how the concept of “postmodern*” was used in the academic articles on law (2000-2013) in “ISI Web of Science” and “Oxford Journals” databases. Table 2 shows that it was used in 37 and 89 articles. So, in the world of law, scientists increasingly consider postmodern issues, but we can also see changes in the Lithuanian law science and we can find manifestations of postmodernism.

Table 1. How many articles mention the concept “postmodernism”?

Research journal	Research articles on law
“Teisė”[Law]	3

Table 2. How many articles mention the concept “postmodern*”?

Databases	Research articles on law
“ISI Web of Science“	37
“Oxford Journals “	89

With regard to the uncertainty of the scientific character of Law science, we should remember the “gap” between legal scholars and practitioners and their frequent miscommunication. Those who have doubts about the scholarship of law, such as B. G. Scharff (2011), argue that the law is neither art nor science. It is trade. For example, German University of Rostock and Dresden University of Technology no longer offer studies in law. Even in 1848 J. Kirchman (1848) said that legal research is worthless because it aims not at discovering general truths, but only concentrates on the existing legislative framework. At the beginning of the 20th century, T. Veblen (1918) argued that the law for the faculties of the University was no better than dance, and G. Gretton (2006), commenting on the present-day scientific problems of law science, argues that law is no longer an academic discipline. Apart from the exceptions, the level of the legal academic community tends to descend. He emphasizes the need for change. If the idea that law is not an academic discipline prevails, the law schools will not be worth their name. Collaboration between different disciplines should be promoted.

4. Changing attitude to science itself

According to R. Feldman (2009), the problem of the relationship between science and law is aggravated by our misconceptions about the nature of science and about what science can give to law. Current science is in the period of a “turning point”. Science itself is no longer mechanical, valueless or non-humanistic. All over the world scientists are increasingly talking about the effect of postmodernism (and new – postmodern - science of complex dynamic systems) on the science of law (e.g., Jones, 2008; Holz, 2006). So, if we do not understand the general developments and trends of science, we may not be able to value properly the science of law. If the attitude to science changes in general, the science of law must also change. Law is increasingly understood as a complex system, which is neither automatic nor valueless. J. B. Ruhl is one of the first scholars of law who introduced complex dynamic systems theory in his works. It is necessary to emphasize the importance of

integrity not only within the law, but also externally. Law science should view what other sciences discuss integrally and openly. Today, it comes to the ability to integrate the mind, facts, and the social and cultural context. We can confidently identify neurolaw as a reflection of ideas of the integrity of sciences. This is a great and very new result of integrating law and other sciences. Thus, only after changing the approach to science itself, we can differently view the law science and its relation to changes in science. The future will show whether different sciences will find common talk among themselves. The current situation shows that more and more persons are willing to start a conversation.

5. Which direction is law science developing?

In the postmodern period, a wide range of ideas appear which affect law science and law philosophy. They also raise a variety of concerns. The approach to the reality also changes. Science is also changing. Today it is seen as a new – postmodern - science of complex dynamic systems (Prigogine, 1997; Gleick, 1987), which is increasingly affecting law science. In order to change the attitude to science itself, we should probably not doubt about the scientific nature of law. What is the specific influence of postmodernism to law science? Here are some possible examples: law science is encouraged to uncloset; law scholars should seek common dialogue among themselves and with law practitioners; they should seek common dialogue not only among themselves, but also with scientists of other branches; integration of science and interdisciplinary approach are promoted; law is increasingly seen as a complex dynamic system (which is hard to manage and is an unpredictable system); law science today can no longer be perceived as a defined system, where you can always find a clear answer; freedom of creativity, bold ideas and criticism are greatly encouraged; law science cannot be separated from values, moral, social and cultural context, law science must be integral and cannot be separated from life. In other words, postmodernism encourages reviewing the values of law science, it is the time of new values, the time of the revaluation, new methods of investigation, it is a time when it is necessary to combine sciences, common sense and social context so that we could understand reality more clearly, though not absolutely clearly. However, we should keep in mind that postmodernism has both advantages and disadvantages. Time will best tell whether this was a better way, or it was a complete downfall. This is the beginning of the road, or maybe just the very beginning. The future of law science will depend not only on the culture of research, but also on the open dialogue between researchers and practitioners for one common goal - that there would be more truth and justice in the highly complex and dynamic world.

6. Conclusions

Now the world lives in a postmodern period with the formation of various postmodern ideas and theories which encourage us to view reality in the postmodern way. Postmodern view means not making cognitive potential absolute (as in the modern period) and increasingly being aware that any knowing depends not only on the subject's cognitive limitations, but also on the complexity and dynamics of the object.

Contemporary state of law science calls into question the scientific character of law science, the science of law is often paralleled to a trade, it is argued that law and science have nothing in common, and that law is not worth to be an academic discipline in universities. The possible reasons for such doubts are as follows: law science is still associated with modernism; insularity of law science; segregation of law to scientific and practical with an increasingly widening gap between researchers and practitioners; law science is increasingly becoming more practical, distancing from solving fundamental theoretical problems and developing new theories, etc.; unchanging approach to science in general and its possibilities.

In Lithuania, postmodern legal thought in law science has difficulty finding a place for itself. Our conducted empirical study has shown that in Lithuania still not much is spoken of postmodernism in law science, while much more is done about it in the world. Inevitably, it must be recognized that the law science is expecting substantial changes and challenges.

Only by changing the approach to science in general we will perceive law science in a different way: that law is a complex dynamic system where it is impossible to find common and correct answers for everybody, and it is impossible to predict the behavior. Most importantly, law scholars will realize that the social system cannot be investigated using deterministic (predictable) methods. Law science should inevitably more respond to the influence of postmodernism. It is important to be critical. We should not stray into a state where “anything is allowed” or “nothing is clear”. It must be understood that postmodernism is not necessarily the best way, only time will tell which is better. The whole world faces that.

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